

2013 DRAFTING REQUEST

Bill

Received: 9/14/2012	Received By: mglass
Wanted: As time permits	Same as LRB:
For: Jeffrey Mursau (608) 266-3780	By/Representing: Tim Gary
May Contact:	Drafter: mglass
Subject: Nat. Res. - boats snomos ATVs	Addl. Drafters:
	Extra Copies:

Submit via email: **YES**
 Requester's email: **Rep.Mursau@legis.wisconsin.gov**
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Regulation and registration of off highway motorcycles

Instructions:

Same as 11-0691 plus attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/3		kfollett 1/14/2014	rschluet 1/14/2014	_____ _____	lparisi 1/14/2014	lparisi 1/24/2014	State S&L

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At
Intro.

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 For: **Jeffrey Mursau (608) 266-3780** By/Representing: **Tim Gary**
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Instructions:

See attached

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/?	mglass	1P2 kjf	10/30	Rs 10/30			

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<END>

2011 DRAFTING REQUEST

Bill

Received: 12/13/2010

Received By: **rkite**

Wanted: **As time permits**

Companion to LRB:

For: **Jeffrey Mursau (608) 266-3780**

By/Representing: **Andy Potts**

May Contact:

Drafter: **mglass**

Subject: **Nat. Res. - miscellaneous**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Mursau@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

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Topic:

Off-highway motorcycle registration and regulation

Instructions:

See attached

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*Converted
to 0082
with session turn
over*

✓
Page 2

Line 5: Do we want additional funding generated through a gas tax formula? 25.29 (1) (dm)

(dm) For fiscal year 1991-92 and for each fiscal year thereafter, an amount equal to the estimated all-terrain vehicle gas tax payment. The estimated all-terrain vehicle gas tax payment is calculated by multiplying the sum of the number of all-terrain vehicles registered for public use under s. 23.33 (2) (c) or (2g) and the number of reflectorized plates issued under s. 23.33 (2) (dm) on the last day of February of the previous fiscal year by 25 gallons and multiplying that product by the excise tax imposed under s. 78.01 (1) on the last day of February of the previous fiscal year.

1 If I recall, the ATV folks wanted to raise their gallon amount. I think we would do well to match their gallon amount. Thinking both should be at 50 gallons. Discussed this with ATV folks.

There is also the issue of the multiplier that snowmobilers have. Talked to ATV Association. Multiplier is out as an issue for us.

Gas tax payment to OHM fund from transportation fund based on the number of current OHM trail stickers on the last day of February each year multiplied times 50 gallons each then multiplied by the excise tax imposed on gasoline. Include out of state trail passes sold in that year for OHM in that count as well.

We will need to close the loop on appropriations to ensure that all the enabling actions are in place so once money is generated we are able to spend it appropriately on the program - very important.

✓
Page 3

✓ Line 14: Do you want to include sidewalks in this definition?

Yes, same as ATV since we will likely share routes.

NO Line 15-18: Does the definition of off-highway motorcycle trail limit us with regard to ATV trails? We need to be completely sure that the language doesn't point exclusively to OHM trails by definition and exclude us from ATV trails. D-N

✓
Page 4 NEW INFO ON REGISTRATION OVERALL IN APPENDIX 1 TO THESE NOTES

Line 13: Do you want any exemptions, especially for OHMs registered out of state? See the ones for ATVs under s. 23.33(2)(b).

(b)Exemptions. An all-terrain vehicle is exempt from registration if it is:

1. Owned by the United States, another state or a political subdivision thereof, but the exterior of the all-terrain vehicle shall display in a visible manner the name of the owner.

2. Covered by a valid registration in another state, province or country if there is some identification of registration displayed on the all-terrain vehicle and it has not been in this state for more than 15 consecutive days. We don't want this. We want people to buy a trail pass instead.

2m. Covered by a valid registration of a federally recognized American Indian tribe or band, if all of the following apply:

- a. The registration program of the tribe or band is covered by an agreement under s. 23.35. *PNK*
- b. The all-terrain vehicle displays the registration decal required by the tribe or band.
- c. The all-terrain vehicle has not been, for more than 15 consecutive days, in that portion of this state that is outside the boundaries of the reservation where it is registered.

3. Used exclusively for racing on a raceway facility.

3m. Present in this state, for a period not to exceed 15 days, and if it is used exclusively as part of an advertisement being made for the manufacturer of the all-terrain vehicle.

4. Owned by a political subdivision of the state and used for enforcement or emergency purposes.

5. Specified as exempt from registration by department rule.

No problem for exemptions for government vehicles. Should be no problem for out of state bikes either if we are talking about the registration for the bike itself, not the trail sticker. *P-N*

Line 17: This draft requires fees to be set by rule. OK? No, we want to include fees in the statute and keep them on a par with ATV registration fees.

Line 19: ****NOTE: The drafting instructions appear to be in conflict. They state that registrations are to be for 2 years, but an annual sticker is needed. Let me know if you want any changes. Two year registration. Begins April 1 and runs through March 31st.

****NOTE: Do you want an OHM to display a registration sticker? Yes. A single side decal in the same size as snowmobile, boat, ATV.

✓
Page 5

Line 13: ****NOTE: I added pars. (c) and (d) relating to operation on public property and Indian lands because I thought they are necessary. I do not think the intent is to allow persons to operate motorcycles throughout a public forest for example. OK

APPENDIX 2 TO THESE NOTES CONTAINS ADDITIONAL INFORMATION ON OPERATION THAT WE WANT TO INCLUDE IN THE STATUTE

(3) No person may rent, lease or loan a Type 1 motorcycle to another unless he or she has ascertained that such party has the required eye protection and, if the party holds an instructional permit under s. 343.07 (4) or is under 18 years of age, that the party has the required protective headgear for operating the Type 1 motorcycle.

(4) Every person in the Type 1 motorcycle rental business shall have clean, usable protective headgear for rent in sufficient quantity to care for the needs of all customers.

History: 1977 c. 29 s. 1654 (7) (e); 1977 c. 204, 447; 1983 a. 133, 243, 538; 1985 a. 65, 85.

Three-wheeled trucks and automobiles, golf carts, and other special purpose vehicles such as street sweepers, industrial fork-lifts, and motorized wheelbarrows are not motorcycles, and operators are not subject to this section. 58 Atty. Gen. 17.

Page 6

Lines 1-4: (b) No person may operate or be a passenger on an off-highway motorcycle that is being operated on an off-highway motorcycle trail or on an off-highway motorcycle route without wearing glasses, wearing goggles, or wearing a protective face shield that is attached to (add "protective") headgear approved by the department.

Line 5- 6: (5) OPERATION ON HIGHWAYS. No person may operate a limited use off-highway motorcycle on the portion of any highway unless one of the following applies: Language

Line 17: (c) Operation is on an off-highway motorcycle route.

****NOTE: Please review the other situations where ATVS are allowed on highways under s. 23.33 (4) (d) and (e) and let me know if you want any additions?

d(3) bridge d(4) MC route e(all) adjacent to roadway

(d) *Operation on roadway.* A person may operate an all-terrain vehicle on the roadway portion of any highway only in the following situations:

1. To cross a roadway. The crossing of a roadway is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the all-terrain vehicle prior to the crossing and yields the right-of-way to other vehicles, pedestrians, and electric personal assistive mobility devices using the roadway.

2. On any roadway which is seasonally not maintained for motor vehicle traffic. Operation of an all-terrain vehicle on this type of roadway is authorized only during the seasons when no maintenance occurs and only if the roadway is not officially closed to all-terrain vehicle traffic.

✓ 3. To cross a bridge, culvert, or railroad right-of-way. The crossing of a bridge, culvert, or railroad right-of-way is not authorized if the roadway is officially closed to all-terrain vehicle traffic. The crossing is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the all-terrain

vehicle prior to the crossing, pedestrians, and electric personal assistive mobility devices using the roadway.

✓ 4. On roadways which are designated as all-terrain vehicle routes. Operation of all-terrain vehicles on a roadway which is an all-terrain vehicle route is authorized only for the extreme right side of the roadway except that left turns may be made from any part of the roadway which is safe given prevailing conditions.

5. On roadways if the all-terrain vehicle is an implement of husbandry, if the all-terrain vehicle is used exclusively for agricultural purposes and if the all-terrain vehicle is registered for private use under sub. (2)(d) or (2g). Operation of an all-terrain vehicle which is an implement of husbandry on a roadway is authorized only for the extreme right side of the roadway except that left turns may be made from any part of the roadway which is safe given prevailing conditions.

6. On roadways if the operator of the all-terrain vehicle is a person who holds a Class A permit or a Class B permit under s. 29.193 (2) and who is traveling for the purposes of hunting or is otherwise engaging in an activity authorized by the permit.

7. On roadways of highways that are all-terrain vehicle trails.

(e) *Operation adjacent to roadway.* A person may operate an all-terrain vehicle adjacent to a roadway on an all-terrain vehicle route or trail if the person operates the all-terrain vehicle in the following manner:

1. At a distance of 10 or more feet from the roadway along U.S. numbered highways and state and county highways. Travel on the median of a divided highway is prohibited except to cross.

2. Outside of the roadway along town highways.

3. During hours of darkness in the same direction as motor vehicle traffic in the nearest lane, although during daylight hours travel may be in either direction regardless of the flow of motor vehicle traffic.

4. Not in excess of the speed limits of the adjacent roadway.

5. With due regard to safety and in compliance with rules promulgated by the department and approved by the department of transportation.

Line 18-20: (6) INTOXICATED OPERATION. (a) *Prohibition.* No person may operate an off-highway motorcycle while under the influence of an intoxicant to a degree which renders him or her incapable of safely operating the off-highway motorcycle.

****NOTE: Based on the drafting instructions, I did not include any of the provisions found under s. 23.33 relating to operating with certain alcohol concentrations, operating while under the influence of restricted controlled substances, causing injury while intoxicated, preliminary breath screening, implied consent, or arresting procedures. See s. 23.33 (4c), (4g), (4L), (4p), and (4x).

There is an issue about detectable drugs versus alcohol.

(4c) INTOXICATED OPERATION OF AN ALL-TERRAIN VEHICLE.

(a) Operation.

1. 'Operating while under the influence of an intoxicant.' No person may operate an all-terrain vehicle while under the influence of an intoxicant to a degree which renders him or her incapable of safe operation of an all-terrain vehicle.

2. 'Operating with alcohol concentrations at or above specified levels.' No person may engage in the operation of an all-terrain vehicle while the person has an alcohol concentration of 0.08 or more.

2m. 'Operating with a restricted controlled substance.' No person may engage in the operation of an all-terrain vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood. WILL DROP 2m FROM DRAFT

3. 'Operating with alcohol concentrations at specified levels; below age 19.' If a person has not attained the age of 19, the person may not engage in the operation of an all-terrain vehicle while he or she has an alcohol concentration of more than 0.0 but not more than 0.08.

4. 'Related charges.' A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of subd. 1., 2., or 2m. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of subd. 1., 2., or 2m., the offenses shall be joined. If the person is found guilty of any combination of subd. 1., 2., or 2m. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under sub. (13) (b) 2. and 3. Subdivisions 1., 2., and 2m. each require proof of a fact for conviction which the others do not require.

5. 'Defenses.' In an action under subd. 2m. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

(b) Causing injury.

1. 'Causing injury while under the influence of an intoxicant.' No person while under the influence of an intoxicant to a degree which renders him or her incapable of safe operation of an all-terrain vehicle may cause injury to another person by the operation of an all-terrain vehicle.

2. 'Causing injury with alcohol concentrations at or above specified levels.' No person who has an alcohol concentration of 0.08 or more may cause injury to another person by the operation of an all-terrain vehicle.

2m. 'Causing injury while operating with a restricted controlled substance.' No person who has a detectable amount of a restricted controlled substance in his or her blood may cause injury to another person by the operation of an all-terrain vehicle. WILL DROP 2m FROM DRAFT

3. 'Related charges.' A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of subd. 1., 2., or 2m. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of subd. 1., 2., or 2m. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of any combination of subd. 1., 2., or 2m. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under sub. (13)(b) 2. and 3. Subdivisions 1., 2., and 2m. each require proof of a fact for conviction which the others do not require.

4. 'Defenses.'

a. In an action under this paragraph, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant, did not have an alcohol concentration of 0.08 or more, or did not have a detectable amount of a restricted controlled substance in his or her blood.

b. In an action under subd. 2m. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol. WILL DROP FROM DRAFT

(4g) PRELIMINARY BREATH SCREENING TEST.

(a) *Requirement.* A person shall provide a sample of his or her breath for a preliminary breath screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated operation of an all-terrain vehicle law and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

(b) *Use of test results.* A law enforcement officer may use the results of a preliminary breath screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated operation of an all-terrain vehicle law or for the purpose of deciding whether or not to request a chemical test under sub. (4p). Following the preliminary breath screening test, chemical tests may be required of the person under sub. (4p).

(c) *Admissibility.* The result of a preliminary breath screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to show that a chemical test was properly required of a person under sub. (4p).

(d) *Refusal.* There is no penalty for a violation of par. (a). Subsection (13)(a) and the general penalty provision under s. 939.61 do not apply to that violation.

(4j) **APPLICABILITY OF THE INTOXICATED OPERATION OF AN ALL-TERRAIN VEHICLE LAW.** In addition to being applicable upon highways, the intoxicated operation of an all-terrain vehicle law is applicable upon all premises held out to the public for use of their all-terrain vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.

(4L) IMPLIED CONSENT. Any person who engages in the operation of an all-terrain vehicle upon the public highways of this state, or in those areas enumerated in sub. (4j), is deemed to have given consent to provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis as required under sub. (4p). Any person who engages in the operation of an all-terrain vehicle within this state is deemed to have given consent to submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis as required under sub. (4p).

(4p) CHEMICAL TESTS.

(a) Requirement.

1. 'Samples; submission to tests.' A person shall provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated operation of an all-terrain vehicle law and if he or she is requested to provide the sample by a law enforcement officer. A person shall submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated operation of an all-terrain vehicle law and if he or she is requested to submit to the test by a law enforcement officer.

2. 'Information.' A law enforcement officer requesting a person to provide a sample or to submit to a chemical test under subd. 1. shall inform the person of all of the following at the time of the request and prior to obtaining the sample or administering the test:

- a. That he or she is deemed to have consented to tests under sub. (4L).
- b. That a refusal to provide a sample or to submit to a chemical test constitutes a violation under par. (e) and is subject to the same penalties and procedures as a violation of sub. (4c) (a) 1.
- c. That in addition to the designated chemical test under par. (b) 2., he or she may have an additional chemical test under par. (c) 1.

3. 'Unconscious person.' A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this paragraph, and if a law enforcement officer has probable cause to believe that the person violated the intoxicated operation of an all-terrain vehicle law, one or more chemical tests may be administered to the person without a request under subd. 1. and without providing information under subd. 2.

(b) Chemical tests.

1. 'Test facility.' Upon the request of a law enforcement officer, a test facility shall administer a chemical test of breath, blood or urine for the purpose of authorized analysis. A test facility shall be prepared to administer 2 of the 3 chemical tests of breath, blood or urine for the purpose of authorized analysis. The department may enter into agreements for the cooperative use of test facilities.

2. 'Designated chemical test.' A test facility shall designate one chemical test of breath, blood or urine which it is prepared to administer first for the purpose of authorized analysis.

3. 'Additional chemical test.' A test facility shall specify one chemical test of breath, blood or urine, other than the test designated under subd. 2., which it is prepared to administer for the purpose of authorized analysis as an additional chemical test.

4. 'Validity; procedure.' A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of the laboratory of hygiene, department of health services and department of transportation under s. 343.305 (6) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this subsection. Blood may be withdrawn from a person arrested for a violation of the intoxicated operation of an all-terrain vehicle law only by a physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician and the person who withdraws the blood, the employer of that person and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53

5. 'Report.' A test facility which administers a chemical test of breath, blood or urine for the purpose of authorized analysis under this subsection shall prepare a written report which shall include the findings of the chemical test, the identification of the law enforcement officer or the person who requested a chemical test and the identification of the person who provided the sample or submitted to the chemical test. The test facility shall transmit a copy of the report to the law enforcement officer and the person who provided the sample or submitted to the chemical test.

(c) Additional and optional chemical tests.

1. 'Additional chemical test.' If a person is arrested for a violation of the intoxicated operation of an all-terrain vehicle law or is the operator of an all-terrain vehicle involved in an accident resulting in great bodily harm to or the death of someone and if the person is requested to provide a sample or to submit to a test under par. (a) 1., the person may request the test facility to administer the additional chemical test specified under par. (b) 3. or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis.

2. 'Optional test.' If a person is arrested for a violation of the intoxicated operation of an all-terrain vehicle law and if the person is not requested to provide a sample or to submit to a test under par. (a) 1., the person may request the test facility to administer a chemical test of his or her breath or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis. If a test facility is unable to perform a chemical test of breath, the person may request the test facility to administer the designated chemical test under par. (b) 2. or the additional chemical test under par. (b) 3.

3. 'Compliance with request.' A test facility shall comply with a request under this paragraph to administer any chemical test it is able to perform.

4. 'Inability to obtain chemical test.' The failure or inability of a person to obtain a chemical test at his or her own expense does not preclude the admission of evidence of the results of a chemical test required and administered under pars. (a) and (b).

(d) Admissibility; effect of test results; other evidence. The results of a chemical test required or administered under par. (a), (b) or (c) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated operation of an all-terrain vehicle law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations at or above specified levels or a detectable amount of a restricted controlled substance in his or her blood. Results of these chemical tests shall be given the effect required under s. 885.235. This subsection does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

(e) Refusal. No person may refuse a lawful request to provide one or more samples of his or her breath, blood or urine or to submit to one or more chemical tests under par. (a). A person shall not be deemed to refuse to provide a sample or to submit to a chemical test if it is shown by a preponderance of the evidence that the refusal was due to a physical inability to provide the sample or to submit to the test due to a physical disability or disease unrelated to the use of an intoxicant. Issues in any action concerning violation of par. (a) or this paragraph are limited to:

1. Whether the law enforcement officer had probable cause to believe the person was violating or had violated the intoxicated operation of an all-terrain vehicle law.
2. Whether the person was lawfully placed under arrest for violating the intoxicated operation of an all-terrain vehicle law.
3. Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required under par. (a) 2, or whether the request and information was unnecessary under par. (a) 3.
4. Whether the person refused to provide a sample or to submit to a chemical test.

(4t) REPORT ARREST TO DEPARTMENT. If a law enforcement officer arrests a person for a violation of the intoxicated operation of an all-terrain vehicle law or the refusal law, the law enforcement officer shall notify the department of the arrest as soon as practicable.

(4x) OFFICER'S ACTION AFTER ARREST FOR OPERATING AN ALL-TERRAIN VEHICLE WHILE UNDER INFLUENCE OF INTOXICANT. A person arrested for a violation of sub. (4c) (a) 1, or 2, or a local ordinance in conformity therewith or sub. (4c) (b) 1, or 2, may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under sub. (4p) (a) 1, shows that the person has an alcohol concentration of 0.05 or less, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

(4z) PUBLIC EDUCATION PROGRAM.

(a) The department shall promulgate rules to provide for a public education program to:

1. Inform all-terrain vehicle operators of the prohibitions and penalties included in the intoxicated operation of an all-terrain vehicle law.
2. Provide for the development of signs briefly explaining the intoxicated operation of an all-terrain vehicle law.

(b) The department shall develop and issue an educational pamphlet on the intoxicated operation of an all-terrain vehicle law to be distributed, beginning in 1989, to persons issued all-terrain vehicle registration certificates under subs. (2) and (2g).

Page 7

Line 14-21: (7) PUBLIC EDUCATION PROGRAM. (a) The department shall promulgate rules to provide for a public education program to do all of the following:

1. Inform off-highway motorcycle operators of the prohibitions and penalties included in the intoxicated operation of an off-highway motorcycle law.
2. Provide for the development of signs briefly explaining the intoxicated operation of an off-highway motorcycle law.

(b) The department shall develop and issue an educational pamphlet on the intoxicated operation of an off-highway motorcycle law.

We need to join with the ATV folks for a unified safety and education program. One safety course for all ORVs. Saves costs, gains efficiencies.

Page 8

Line 3: ****NOTE: Do you not want any minimum age requirement for the operation of a limited use off-highway motorcycle?

12 years old to be on a route. Make public land or on a trail designated by the department align with ATV. For private land not open to public "no". Keep in mind that ATV people are changing their statute regarding who can supervise kid on an ATV - we need to make sure ours gives us the latitude we want.

Language from 2011 Senate Bill 235:

. . . allows a person under the age of 12 to operate an off-highway motorcycle any place that any other person may operate an OHM provided that the person under the age of 12 is operating a small OHM and he or she is accompanied, and not just supervised, by his or her parent or guardian or a person who is at least 18 years old who is designated by the parent or guardian (accompanied by parent or parent designee).

Also want to add an agricultural purpose exception that would allow a person under 12 to operate and OHM of any size for an agricultural purpose if he or she is under the supervision of a person over 18 years of age. 23.33(5)(am) covers Roadway Restrictions.

Want an exemption for the requirement for a person who is at least 12 years old to be able to operate an OHM without a safety certificate as follows:

-on land under the management and control of the person's immediate family.

-at a sponsored OHM demonstration event wherein the sponsor requires the person to wear protective headgear and the person operates on a closed course at a speed not exceeding 25 mph. If under 18, the person must be accompanied by the a parent or designee.

not yet done

Line 18 forward: ****NOTE: Section 23.33 has a definition of "ATV club." Do you want a similar definition for this legislation? See s. 23.33 (1) (bc). Yes

Page 9

Lines 18-21:

c. Off-highway motorcycle dealers and manufacturers.

****NOTE: Section 23.33 has a definition of "ATV dealer" and "ATV manufacturer." Do you want similar definitions for this legislation? See s. 23.33 (1) (bd) and (bp). Yes

d. Off-highway motorcycle clubs.

****NOTE: Section 23.33 has a definition of "ATV club." Do you want a similar definition for this legislation? See s. 23.33 (1) (bc). Yes

e. Off-highway motorcycle alliances.

****NOTE: Chapter 350 has a definition of "snowmobile alliance." Do you want a similar definition for this legislation? See s. 350.138 (1) (d). Association?

f. All-terrain vehicle clubs, as defined in s. 23.33 (1) (bc). WANT TO ADD "MOTORIZED CLUB" TO ACCOUNT FOR COMBINATION ATV/MC CLUBS

g. Snowmobile clubs, as defined in 350.138 (1) (e). ?

Page 10

Lines 6-9: 7. Publishing a manual in cooperation with the department that shall be used to train volunteers in monitoring the recreational operation of off-highway motorcycles for safety issues and other issues that relate to the responsible operation of off-highway motorcycles.

This needs to be a combined program for all ORVs. We discussed this concept with the ATV association. Needs review and action by the DNR.

Line 15: ****NOTE: I defined "public off-highway motorcycle corridor" based on the definition found in s. 23.33 (2j).

(a) In this subsection, "public all-terrain vehicle corridor" means an all-terrain vehicle trail or other established all-terrain vehicle corridor that is open to the public but does not include an all-terrain vehicle route. OK

Line 1: (d) The department shall allocate a certain amount for the incentive payments under this program for each fiscal year and shall promulgate rules to determine the amount of the individual incentive payments. We want to phrase this along the line of "up to a certain percentage may be paid" so that we do not lock in funds that can't be spent elsewhere if there isn't a demand for incentive payments.

do
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appropriate

needs D-N
saying done
in approps

Line 19-24: 3. A functioning muffler to prevent excessive or unusual noise and with a functioning spark arrester of a type approved by the U.S. forest service.

(c) No person may operate an off-highway motorcycle if the off-highway motorcycle is constructed in such a manner that noise emitted from the off-highway motorcycle exceeds 96 decibels on the A scale as measured in the manner required under rules promulgated by the department. WILL REMOVE EXCESSIVE/UNUSUAL

✓ The 96 decibels is fine, but where is "excessive and unusual" defined? That is pretty broad by itself. Take excessive and unusual out and stick to 96 db.

OK ****NOTE: As drafted the provisions under sub. (10) apply wherever the off-highway motorcycle is being operated, whether on private or public property, highways, or trails or routes.

We need to distinguish between "private and private open to the public". We also need to account for winter riding on frozen waters. WILL REMOVE PRIVATE & ACCOUNT FOR FROZEN WATERS

On the frozen surface of public waters within 100 feet of a person not in or on an off-highway motorcycle or motor vehicle or within 100 feet of a fishing shanty at a speed exceeding 10 miles per hour.

NEED EXCEPTION FOR SPECTATORS AT AN EVENT AND PEOPLE LIKE FLAG MEN AT CORNERS AT AN ICE RIDING EVENT

Lines 1-7: (11) ACCIDENTS. (a) If an operator of an off-highway motor vehicle is involved in an accident that results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each off-highway motorcycle involved in the accident shall give notice of the accident to a conservation warden or local law enforcement officer as soon as possible and shall file a written report of the accident with the department on the form provided by it within 10 days after the accident.

Death on private property needs to be reported. Injury that requires treatment on private property not open to the public should not need to be reported. If you tipped over in your own back yard

not yet done

and had to see a physician for that injury why would it be necessary to report it to the department? NO REPORT INJURY ON PRIVATE PROPERTY OR RACETRACK

****NOTE: I kept the phrase "by a physician" in this provision; otherwise any treatment by anyone would result in the reporting requirement.

Line 11-14: (12) TRAILS AND ROUTES. (a) *Department authority*. The department shall encourage and supervise a system of off-highway motorcycle trails and off-highway motorcycle routes. The department may establish standards and procedures for designating off-highway motorcycle trails and off-highway motorcycle routes.

Shared with ATV provisions? Also, want to be sure that the language does not exclude us from ATV trails and routes somehow.

Line 19 and 20 (muffler) not applicable for electric motorcycles.

Page 13

Line 5-7: (e) *Signs*. The department, in cooperation with the department of transportation, shall establish uniform signs and standards for off-highway motorcycle trails and off-highway motorcycle routes.

Combine with ATV. Standard signage on all.

Page 14

Line 8: Recreational activities; limitation of property owners' liability.

(14) LIABILITY OF LANDOWNERS. Section 895.52 applies to this section.

****NOTE: I have included the above provisions which cross-reference to s. 895.52 because motorcycling is a recreational activity under s. 895.52. See s. 895.52 (1) (g).

Line 22: ****NOTE: The provisions under s. 23.33 (11) (a) and (am) 1. really do not mesh. Therefore, I have rewritten s. 23.33 (15) to reconcile those two provisions. Checked extracts.

Page 16

Line 10: ****NOTE: Section 23.33 has a penalty enhancer for intoxicated operation when there is an underage passenger involved. Do you want a similar provision? See s. 23.33 (13) (bg). OK?

Page 17

Line 11-13: 350.01 = snowmobiles. 23.33 = ATVs 23.50 = forfeitures.

Page 24

Line 1: of an all-terrain vehicle. Need to distinguish limited use OHM.

Under 23.335 we need a definition for a small off-highway motorcycle - 100cc or less.

"Small all-terrain vehicle" means an all-terrain vehicle that has 4 wheels and that has either an engine certified by the manufacturer at not more than 90 cubic centimeters or an equivalent power unit.

DN
MODIFICATIONS: Somewhere (definitions?) we need to identify that an off-highway motorcycle might be modified to run on snow or ice. For example, there are modifications available to add a ski to the front wheel and a continuous track to the rear wheel which would allow a modified OHM to operate on off-highway motorcycle trails in the winter time.

Appendix 1 Registration Notes

NR 65.02 Registration.

(1) APPLICATION. Upon receipt of the required fees under this statute, payment of any sales and use taxes due and an application on a form provided by the DNR, the DNR shall issue to the applicant a registration certificate stating the registration number, the name and address of the owner, and other information the DNR deems necessary.

(2) ISSUANCE.


(a) The DNR shall issue a registration decal with the registration certificate for each Off Highway Motorcycle owned by an individual owner. The decals contain reference to the state, the DNR, and a machine identification number. Registration decals for Off Highway Motorcycle registered for public use shall also contain a reference to the expiration date of the registration.

(b) The DNR may designate authorized distributors of registration decals.

(3) EXPIRATION.

(a) Off Highway Motorcycle public use registration shall be valid for two years beginning April 1 or the date of issuance or renewal and ending March 31 of the second year following the date of issuance or renewal.

(b) Off Highway Motorcycle private use registration shall be valid from the date of issuance until ownership of the Off Highway Motorcycle is transferred.

 (4) DUPLICATE. If a registration certificate or registration decal is lost or destroyed, the owner may apply for a duplicate on a form provided by the department. Upon receipt of a proper application and the required fee, the department or its authorized agent shall issue a duplicate registration certificate or registration decal to the owner.

(5) TRANSFER. Upon transfer of ownership of an Off Highway Motorcycle for which a registration certificate has been issued, the seller shall deliver the assigned certificate to the purchaser at the time of sale. The purchaser shall complete an application for transfer on a form provided by the DNR and mail or deliver it to the DNR within 10 days after the date of purchase.

(6) RENEWAL. Prior to the end of the registration period, the department shall notify the owner of each Off Highway Motorcycle registered for public use of the need to renew. The owner shall complete the renewal as per the requirements of the DNR. Failure to receive notice of the need to renew does not relieve the owner of the obligation to renew the Off Highway Motorcycle registration.

(7) If an Off Highway Motorcycle is junked, the owner shall return the registration certificate to the department marked "junked."

(8) Off Highway Motorcycle owned and operated by the state or by any county or municipality of this state shall display registration a registration decal.

(9) No municipality may register or license "Off Highway Motorcycle. Municipalities may charge a seasonal or daily Off Highway Motorcycle area use fee but may not charge a seasonal or daily trail use fee if the municipality receives trail maintenance aids under s. NR

NR 65.03 Registration decals.

*u
starts*
(1) Registration decal shall be permanently affixed to the Off Highway Motorcycle by the decal's own adhesive in a position on the side of the motorcycle that is clearly visible. The owner of an Off Highway Motorcycle shall maintain the registration decal in a legible condition at all times.

(2) Except as provided in sub. (3), the decal shall be permanently attached and displayed on the "Off Highway

Motorcycle before any person operates the vehicle.

(3) A person may operate an Off Highway Motorcycle without having the registration decal displayed as provided in sub. (2) if the owner has a receipt validated by the DNR or its authorized agents. The operator shall have the validated receipt in his or her possession at all times when operating the Off Highway Motorcycle and shall exhibit it upon demand for inspection by any person authorized to enforce this section under statute. Upon receipt, the registration decals shall be displayed in the manner indicated in sub. (1).

NR 65.04 Change of address. If the owner of a registered Off Highway Motorcycle changes his or her address, the owner shall notify the department in writing of the new address within 15 days after the address change.

NR 65.05 Completion of application for registration by Off Highway Motorcycle dealers.

(1) When an Off Highway Motorcycle dealer sells an Off Highway Motorcycle, the dealer shall require the buyer to complete an application for a registration certificate and collect the required fee at the time of sale. The dealer shall mail the application and fee to the department no later than 7 days after the date of sale. The department shall provide combination application and receipt forms and the dealer shall furnish the buyer with a complete receipt showing that application for registration has been made. The operator of the Off Highway Motorcycle shall have this completed receipt in his or her possession while operating the Off Highway Motorcycle until the registration decal is received. No dealer may charge an additional fee to the buyer for performing the service required under this section.

(2) When an Off Highway Motorcycle dealer sells an Off Highway Motorcycle to a person from another state who wishes to register that Off Highway Motorcycle in his or her home state, the dealer shall complete an application that the Off Highway Motorcycle is to be registered in another state, furnish the buyer with one copy and retain one copy for the dealer's records and shall mail one copy to the department no later than 7 days after the date of sale.

(3) Every Off Highway Motorcycle dealer shall maintain, for one year, a record in the form prescribed by the department for each new Off Highway Motorcycle sold. These records shall be open for inspection by the department.

(4) No dealer may accept an Off Highway Motorcycle in trade unless it is registered with the department or another state.

WE WOULD ALSO LIKE TO ADD A PROVISION FOR A DEALER PLATE FOR DEMO OHM, ETC

A commercial dealer (manufacturer, dealer, distributor, or renter) of off-highway motorcycles must register with the DNR and obtain a commercial OHM certificate. The dealer must then supply and display a plate on which a DNR supplied decal is affixed. The DNR will issue these decals once the commercial dealer registers with the department.

(There is a dealer plate DOT program for motorcycles. This would be particular for off-highway use on trails where a registration sticker would otherwise be required.)

We want a non-resident trail pass program. Passes would expire March 31st each year (annual). Sticker would follow the same display provisions of regular sticker. Need to determine a fee. Best to align fee with ATVs.

Appendix 2 Operating Rules that we initially thought we wanted in the admin code but that might be better in the statute instead.

NR 65.06 Operating rules.

(1) No person may operate an Off Highway Motorcycle:

- hw (a) On or across a cemetery, burial ground, campground, park, school property or church property without consent of the owner.
- hw (b) On the lands of an operating airport or landing facility except for personnel in performance of their duties or with consent.
- hw (c) At a rate of speed that is unreasonable or improper under the circumstances.

(2) The operator of an Off Highway Motorcycle shall slow his or her vehicle to a speed not to exceed 10 miles per hour and yield the right-of-way when traveling within 100 feet of a person who is not on an ATV, UTV, a snowmobile, or a motorcycle except as provided under statutes where applicable. NEED EXCEPTION FOR SPECTATORS AT AN EVENT AND PEOPLE LIKE FLAG MEN AT CORNERS AT AN ICE RIDING EVENT

(3) **Off Highway Motorcycle NOISE EMISSIONS AND TESTING.** No person may manufacture, sell, rent or operate an Off Highway Motorcycle that is constructed or altered in a manner that noise emitted from the Off Highway Motorcycle exceeds 96 decibels on the A scale when measured in the manner prescribed in the reaffirmed 1998-07, Society of Automotive Engineers Standard J1287, entitled *Measurement of Exhaust Sound Levels of Stationary Motorcycles*.

NR 65.07 Owner permitting operation. An owner or other person having charge or control of an "Off Highway Motorcycle" may not authorize or permit any person to operate the "Off Highway Motorcycle" if the person is:

(1) Prohibited from operating an Off Highway Motorcycle under s.23.33(5).

(2) Incapable of operating an Off Highway Motorcycle because of a physical or mental disability, or

(3) Under the influence of fermented malt beverages, intoxicating liquor or controlled substances.

NR 65.08 Refusal to allow testing. No operator or owner of any "Off Highway Motorcycle" may deny inspection or may refuse to operate his or her "Off Highway Motorcycle" in a manner prescribed by the law enforcement officer who reasonably suspects a violation of "Off Highway Motorcycle" equipment requirements found in s. 23.33, Stats.

History: Cr. Register, December, 1999, No. 528, eff. 1-1-00.

NR 65.09 Safety certification program. The department shall establish a program of instruction on Off Highway Motorcycle vehicle laws, regulations, safety and related subjects. The program shall include the following:

(1) The program may be conducted by instructors certified by the department or the department may establish a correspondence-type course.

(2) The department shall procure liability insurance coverage for certified instructors for

12.5.07
346.6361
influence
extreme
drive
safely

work within the scope of their duties under this section.

History: Cr. Register, July, 1986, No. 367, eff. 8-1-86; CR 00-110: r. (3) and (4) Register April 2002 No. 556, eff. 5-1-02.

AS NOTED PREVIOUSLY, THE SAFETY TRAINING COURSE FOR ATV/UTV/OHM NEEDS TO BE COMBINED INTO A SINGLE PROGRAM.

NR 65.10 Accident report confidential. No report required under s. 23.33 (7), Stats., to be filed with the department may be used as evidence in any trial, civil or criminal, arising out of an accident, except that the department shall furnish upon demand of any person who has or claims to have made such a report, or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department. This information will be provided solely to prove a compliance or failure to comply with the requirement that such a report be made.

History: Cr. Register, July, 1986, No. 367, eff. 8-1-86.

NR 65.11 Coroners and medical examiners to report: require blood specimen.

(1) Every coroner or medical examiner shall, on or before the 10th day of each month, report in writing to the department the death of any person within his or her jurisdiction during the preceding calendar month as the result of an accident involving an Off Highway Motorcycle and the circumstances of such accident.

(2) In cases of death involving an Off Highway Motorcycle in which the decedent died within 6 hours of the time of the accident, a blood specimen of at least 10 cc. shall be withdrawn from the body of the decedent within 12 hours after death by the coroner or medical examiner or by a physician so designated by the coroner or medical examiner or by a qualified person at the direction of a physician. All morticians shall obtain a release from the coroner or medical examiner prior to proceeding with embalming any body coming under the scope of this section. The blood drawn shall be forwarded to a laboratory approved by the department of health services for analysis of the alcoholic and controlled substance content of the blood specimen. The coroner or medical examiner causing the blood to be withdrawn shall be notified of the results of each analysis made and shall forward the results of each analysis to the department of health services. The department of health services shall keep a record of all such examinations to be used for statistical purposes only. The cumulative results of the examinations, without identifying the individuals involved, shall be disseminated and made public by the department of health services. The department shall reimburse coroners and medical examiners for the costs incurred in submitting reports and taking blood specimens and laboratories for the costs incurred in analyzing blood specimens under this section.

History: Cr. Register, July, 1986, No. 367, eff. 8-1-86; correction in (2) made under s. 13.93 (2m) (b) 6., Stats., Register, December, 1999, No. 528; corrections in (2) made under s. 1392 (4) (b) 6., Stats.

NR 65.12 Routes.

(1) An Off Highway Motorcycle route may be established by a town, city, village or county by adopting an ordinance designating a highway as an Off Highway Motorcycle route and signing the highway in accord with s. 23.33 (8), Stats., and rules of the department.

(2) A town, city, village or county may adopt an ordinance designating a state trunk highway or connecting highway as an Off Highway Motorcycle route if the department of transportation approves the designation.

(3) A town, city, village or county may adopt an ordinance designating a sidewalk of a state

trunk highway bridge as an "Off Highway Motorcycle" route with the approval of the department of transportation.

(4) A town, city, village or county may designate a route as an "Off Highway Motorcycle" route during certain periods of the year and prohibit the operation of "Off Highway Motorcycle" on that route during other periods of the year.

(5) Off Highway Motorcycle operation is not permitted on state trunk highways or connecting highways except as provided for under s. 23.33 (4), Stats., or sub. (2) or (3).

(6) No person may operate an Off Highway Motorcycle on a restricted Off Highway Motorcycle route during any period of the year when the operation of Off Highway Motorcycle is prohibited.

(7) Signs for Off Highway Motorcycle routes on highways and sidewalks designated for use by the governmental unit having jurisdiction as authorized under s. 23.33 (8), Stats., shall meet the following requirements prescribed by the DNR.

(9) Off Highway Motorcycle route signing shall be done by or under the direction of and is the responsibility of the unit of government which designates the Off Highway Motorcycle route.

History: Cr. Register, July, 1986, No. 367, eff. 8-1-86.

WE NEED A PROVISION THAT ALLOWS FOR COMBINED SIGNAGE THAT WOULD ALLOW US TO GAIN SOME ECONOMY FOR HAVING A ROUTE THAT INCLUDES BOTH ATVS AND MOTORCYCLES INSTEAD OF COMPLETELY SEPARATE SIGNAGE.

"RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

 **DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN**


(Request Made By: MB) (Date: 9 / 14 / 12)

Note:

**BOTH DRAFTS SHOULD HAVE THE
SAME "REQUESTOR"**

(exception: companion bills)




☐  Please transfer the drafting file for
2011 LRB 00691 (For: Rep. / Sen. Mursan)

to the drafting file for

2013 LRB 13-0082 (For: Rep. / Sen. Mursan)

-----OR-----

☐  Please copy the drafting file for
2013 LRB _____ (include the version) (For: Rep. / Sen. _____)

and place it in the drafting file for

2013 LRB _____ (For: Rep. / Sen. _____)

 Are These "Companion Bills" ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history

("guts") from the original file: _____